

**EXAMINING THE NEXUS BETWEEN INFORMATION AND COMMUNICATION
TECHNOLOGIES (ICTs) AND HUMAN RIGHTS IN AFRICA:
A SURVEY OF THE KEY ISSUES**

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FINAL TECHNICAL REPORT ON THE SCOPING PHASE

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Abstract

In Africa, as is the case in many other parts of the world, policymakers are under pressure to reform their laws, policies and practices with a view to participating fully in the knowledge economy. The challenge is to find the right balance between policies that support openness and the dissemination of information, on the one hand, and those that address national security, national interests and law enforcement, on the other. This project explored the linkages between information and communication technology (ICT), governance and human rights in five African countries with various ICT environments and legal regimes, such as common law, civil law and Roman Dutch law. The exploration focused on four main areas: privacy rights, access to information, censorship, and freedom of expression, with emphasis on the issue of hate speech. The countries studied were Uganda, South Africa, Rwanda, Nigeria and Morocco. A research team from the Human Rights and Peace Centre at Makerere University, in cooperation with Privacy International undertook the scoping study, identified project partners and organized a workshop to develop a research project to be submitted to IDRC for funding consideration. Overall, it was found that there is a dearth of literature on ICTs and human rights in Africa and that a lot remains to be done in this field in Africa, particularly by African institutions and researchers. The scope of issues to cover in this area of study is wider than was initially targeted.

Keywords: Information and Communication Technologies, Human rights, Privacy, Censorship, Access to information, hate speech, Internet governance.

The Research Problem

Prior to the commencement of this project, it was recognized that several studies and research projects had been commissioned on various issues that relate to the nexus between ICTs and Human Rights, albeit only indirectly.¹ Among the key issues of focus addressed in this research was the question of Interception, Digital Censorship and Surveillance of the Internet and interference with mobile telephone communications. These studies and projects are most appropriately grouped under the generic term *cyber-democracy*, reflecting in the main a Policy Science perspective. Of notable concern was the fact that not all the studies adopted a human rights perspective to the issues involved, nor indeed, did they cover the wide arena of rights. Moreover, few of these studies have covered the African continent. Among those that have paid some attention to African countries, the coverage of human rights and other issues peculiar to the African continent remains wanting. In a nutshell, while the literature on ICTs in Africa is significant and growing, very little of this output focused directly on the link between ICTs and human rights.

Against the preceding background, this project aimed at investigating and filling in the research gaps by providing a comprehensive collection and analysis of data on the critical question of the link between ICTs and human rights. This report covers the findings of the scoping phase of what was envisaged as a much larger project. The primary goal of the project was to bring together a team of experts on the African continent to collectively surface a more holistic approach to the discussion of the nexus between ICTs and human rights within the African context. At the general level this research was intended to consider a number of broad issues, including Access, Diversity, openness and security, critical Internet resources, the role of ICTs in good government, and the rights of marginalized groups. More specifically, the project was to focus on the question of access to information, the right to privacy, censorship and cyber-democracy, the nexus between ICTs and the

¹ See for instance the three part series of books commissioned by IDRC on ICTs and African Development: **INFORMATION AND COMMUNICATION TECHNOLOGIES FOR DEVELOPMENT IN AFRICA** Three-volume Set CODESRIA/IDRC 2004 ISBN 1-55250-010-1 available at http://www.idrc.ca/en/ev-84708-201-1-DO_TOPIC.html. See also, Patrick Brunet, Oumarou Tiemtoré, and Marie-Claude Vétrano-Soulard, **ETHICS AND THE INTERNET IN WEST AFRICA: TOWARD AN ETHICAL MODEL OF INTEGRATION**, Africa World Press/IDRC 2004, ISBN 1-59221-163-1, e-ISBN 1-55250-072-1 also see http://www.idrc.ca/en/ev-9437-201-1-DO_TOPIC.html

rights of marginalized groups, and the right to freedom of expression. These issues were to be situated within the broader framework of the context of good governance. Unlike previous cyber-democracy studies, at the crux of this project was the nexus between ICTs and a range of critical human rights.

The urgency of this study was twofold. In the first instance, it was recognized that there is a dearth of scientific evidence and analysis in this field of scholarship on the African continent. The project would thus be path breaking and novel and was intended to attract the attention of various stakeholders to whom the human rights dimension of these issues is unfamiliar. Secondly, the results of such gathering and analysis would provide the basis for engaging with policy, stimulating the accountability of African governments, and improving research networking and activism on the relationship between ICTs and human rights across Africa. In the long term, it was envisaged that as part of its second phase, the study will engage in ongoing international debates at different fora, including but not limited to, debates resulting out of the World Summit on the Information Society (WSIS) process, the Internet Governance Forum (IGF), and other initiatives and projects such as the Carter Centre's Access to Information Project. It would also build synergies with other research and study initiatives in the area. In so doing, the study would be a key resource of reliable and up-to-date Africa-based information and provide comprehensive data and critical perspectives about ICTs and Human Rights in Africa.

As had been envisaged, the scoping phase confirmed that the approaches of each country to the questions surrounding the regulation and use of ICTs varied considerably and so did the scope of issues covered. Approaching the project within its initially considered human rights related parameters, it was found that there was little or no focus on the issues of Access, Diversity, openness and security, critical Internet resources, the role of ICTs in good government, and the rights of marginalized groups. The studies were thus confined to the specific issues pointed out above.

Project Objectives

From a technical standpoint, this phase of the project achieved its intended objectives. To support this conclusion, this part of the report considers three aspects:

- (i) It measures the project against its objectives both general and specific as they were set out in the scoping document;
- (ii) It offers an analysis of what the discernible research trends are on the basis of a literature review conducted during the scoping phase and,
- (iii) It analyses the issues as they were set out at the commencement of the project and what suggestions there were towards the issues to be considered for the second phase of this project.

Scoping Objectives

General Objectives

The overarching aim of the scoping phase was to: examine the possible avenues in which the listed issues could be interrogated, suggest possible ways in which the resultant teams will be able to impact on the policy space and, influence the actions of all the stakeholders involved on all fronts.

Is there need for further research?

It is important to note from the onset, that some of the issues canvassed in the scoping document had never been interrogated in the target countries. In Rwanda for instance, while there is a major drive towards embracing ICTs, the scoping phase disclosed that there is little or no concern at all for the human rights implications of the use of ICTs. This is not only the case with technologies that are new and fast evolving such as the revolving use of the cell phone and Internet, but also with earlier existing technologies such as Radio. While the role of radio in the 1994 genocide is well documented, there is no connection established between radio as a form of ICTs and human rights violations in post 1994 Rwanda. But this is just one of the forms of ICTs. Moreover, Rwanda is not the only country among the target countries where little or no interrogation of the human rights dimensions of the proliferation of ICTs was found.

In Morocco, it was also discovered that the use of ICTs as a medium for the dissemination of knowledge is vibrant. Websites such as that of the Communications Commission (Telecommunications regulator) are awash with information, but not all this information addresses the specific issues that people would be interested in, from the perspective of the scoping issues. (For example, what is the government's policy on privacy of information?). Also, in the Moroccan context, while much information is available on the regulator's website, it is hardly accessible as it is mostly in Arabic, thereby limiting the scope of those who can actually read the information, especially foreigners or researchers doing work outside Morocco but with an interest in what is happening in Morocco. From the perspective of access to information, the right to know and the role of ICTs in meeting this right, it will certainly be important to interrogate the question further as to what really is the information available to the citizenry and whether ICTs make information not only available but also accessible.

In the Ugandan context, human rights issues relating to ICTs are not entirely strange to researchers and the populace. However, the research uncovered a critical scarcity of empirical evidence of such violations. The scoping phase disclosed a critical need to detail and document the empirical and specific human rights issues arising within the spectrum of the issues this project is focusing on. In the area of censorship, for instance, it is now common knowledge that the government lawfully or otherwise is engaging in phone tapping and recently passed legislation to give full effect to this mode of surveillance. However, no evidence of this process and the extent to which it is practiced was actually unearthed. On the positive side, however, it is sufficient to note that the scoping phase drew more attention to the issue among academics at Makerere University. The Human Rights and Peace Centre has since released a working paper on the phone-tapping bill in Uganda and its human rights implications.

On the other hand, in Nigeria, ICTs and their implications are rather well known. But the evidence of human rights implications is scanty and on some

issues virtually non-existent. One of the scoping issues that highlight the problem of undocumented violations that was disclosed in the scoping phase is the method of screening at airports. In Nigeria, one is sometimes required to strip naked and to walk through a metal detector. The violation of one's privacy in this context is without question and yet there is no legal or policy analysis in this direction. The pattern between access to information and the freedom to do so and Nigeria's potential development was also canvassed in the research paper received during this phase from our Nigerian partners. That paper—as was the case with all the other country surveys conducted in this phase—discloses many issues that need to be interrogated further.

What the above demonstrates is that from a technical research standpoint, there is a need to further investigate the issues in these countries. One almost reaches the conclusion that there are various human rights violations related to ICTs that are not covered at all in mainstream reporting, literature or legislation and yet they need to be addressed. In this context, concrete research presents a unique opportunity. Furthermore, on a random sampling such as the one above, there are discernible patterns either of deliberate or inadvertent government avoidance of the human rights dimensions of the role of ICTs in a country and in development, or of a general ignorance among the population, literate or not, in these countries, of the human rights dimensions of the growth in the use of ICTs.

How best can the interrogation be handled?

In the context of the first general objective of the scoping phase, it became clear that there is a lot of work that needs to be done in further interrogating the human rights dimensions of the project issues. All the partners agreed that collaborative research would present the most viable avenue through which the issues could be interrogated both from a domestic perspective as well as from a comparative position so as to discover any relationships and trends between the target countries and perhaps the rest of Africa. This interrogation can take two forms: (i) the research project could simply investigate on the basis of available literature and other sources, what the patterns are and what the evidence is and what it tells us; or (ii) the project could make use of monitoring tools to capture these violations in addition to

what the available evidence informs. An approach that combines both options is most preferred. This is because as a project intended to influence policy and advocacy, the complementarity between empirical research and analytical investigation of both policy and practice would go a long way in informing the intended country specific patterns and solutions.

However, the scoping phase also disclosed, as is further covered below, that there is no sole comprehensive framework of informative sources on all the issues and their dimensions in Africa. While elsewhere other research initiatives have developed monitoring tools to interrogate the issues and their dimensions (for instance ONI Asia has some monitoring tools in the area of censorship), all these initiatives focus on one (censorship) and not the rest of the issues in this project and none of these initiatives is actively interrogating what is happening in Africa. At the same time, there are no indigenous African initiatives akin to what is being done elsewhere. On the basis of this objective alone, the scoping phase made it clear that what this project has set out to achieve is truly unique in Africa. It is suggested therefore, that linkages be established not only within the initial project countries, but also with the initiatives elsewhere with the view to not only interrogating the trends on the research issues but also to monitor performance in each area in each country.

Penetrating and impacting policy space

The second general objective was to suggest ways in which the teams would be able to impact on the policy space. Publication and dissemination of analyses was viewed as the most practical way. Other avenues such as public interest litigation in the study area were discussed as one of the ways to influence policy. To this end, the partners that were chosen in each country have a demonstrably incredible network within which they are able not only to analyze and synthesize literature from a legal and policy view but also to distribute and publicize the same. On their part, the individuals who participated in the project were carefully selected based on the discernible ability to do the kind of analytical work that would contribute significantly to the legal and other policy spheres. Interestingly, in the Ugandan case for instances, one of the team members has continued to do work on the phone tapping bill and his work was adapted by a non governmental organization and

presented to the parliamentary committee in charge of gathering the population's views on the bill. A team member from South Africa and another from Rwanda have since worked jointly on further research in the field of the regulation of cyberspace.

In similar ways, it is believed that our research teams can be informative in both the formative and reformative stages of making laws and policies. This would go hand in hand with their ability to influence various stakeholders on all fronts. The key here was to identify and bring together the right mix of people with not only the best skills set but also the ability to make inroads into the policy space. In the African context, this would include institutions and people with the ability to reach out to lawmakers, academics, civil society, the media and the rest of the population. Most of the individuals in the research network established during the scoping phase have ties with civil society).² In the Ugandan context, for instance, the Human Rights and Peace Centre has held symposia that have attracted media attention in the area of law making.

At the workshop held in Kampala in April 2009, discussion on how to influence policy benefited from the experiences of Alice Munyua, a Commissioner with the Kenya Communications Commission who has roots in civil society as well. The project would develop relationships with such people and reach out to similar target audiences in the other countries. Suffice it to note that legislators in Uganda are taking a keener interest in ICT policy as has been demonstrated by some members of parliament having taken the trouble to attend the East African Governance Forum. Such persons would be at the centre of the project's focus in the second phase.

The workshop presented a great opportunity to confirm and indeed did confirm that the kind of individuals and institutions chosen were those that have the ability to hold conferences, workshops and symposia on the issues as well as to invoke non conventional means of influencing and driving policy such as public interest litigation. It is hoped therefore, that in the second phase of

² Professor Bolaji Owasanoye is not only an academic of distinction being head of department at the Nigerian Institute of Advanced Studies—famous for its contributions to the Nigerian Legal sector—but also the proprietor of the Human Development Initiative, a civil society organization that reaches out to the various echelons of society.

the project, each of these institutions should be able to attract the right mix of people to any of these events that could be held in their countries and to ensure that their publications are widely distributed.

On the whole, the scoping phase met its intended general objectives and delivered several outcomes at that level. Some of the discernible general outcomes are that the phase helped identify key personnel with vast experience, unique skill sets and keen interest in the scoping issues. The phase demonstrated a critical need for collaborative and interdisciplinary research in this area, both for the documentation and analysis of present and emerging trends, as well as for the purpose of monitoring developments in the context of the nexus between ICTs and Human rights. Most significantly, the scoping phase disclosed that there is no single network or institution in Africa interrogating the nexus between ICTs and human rights from the dimension of the five scoping issues that were ably elucidated in the scoping document. In fact, there are several other angles and perspectives that fall squarely within these four scoping issues that were not initially envisaged in the scoping phase. In this context, we are of the view therefore, that there is tremendous potential for a larger project in this area.

Specific Objectives:

The more specific objectives of the project were to:

- Conduct a scoping study of the issues relating to ICTs and human rights in Africa and gather the information and perspectives (through interviews and a workshop) on the issues introduced in the proposal.
- Identify and establish research teams, research partners and commence a process of building research capacity in African nations—coupled with networking among researchers—in order to research the relationship between ICTs and human rights.
- Gather and analyze published evidence—including research reports and academic peer-reviewed publications—on the interrelationships between ICTs and human rights in Africa, and
- Build methodological best practices that will be effective in investigating the nexus between ICTs and human rights.

The scoping phase begun with the identification of potential research partners and the creation of research teams. Two technical observations can be made here.

First of all, from a content point of view, it was harder in some countries to identify the kind of teams that would offer the kind of discourse analysis that was required for a project of this nature. To do this, we had to take an interdisciplinary approach. We had to find a mix between civil society and academia. The kind of issues the project sought to address would require an analytical perspective from both conventional constitutional law approaches to the contemporary approach to issues relating to ICTs, such as the Internet. In the result, we constituted teams in each country, with some of the teams comprising of members from different institutions, but who were able to work in sync to produce preliminary studies on their countries. The teams we set up were able to work together towards the preparation of well-researched papers that were presented and discussed at the workshop. Most of these papers were later published in a special issue of the *East African Journal on Peace and Human Rights*. The success of the teams' efforts in working towards the workshop confirmed to us that we had selected the right partners both in terms of core ability to handle the intended research and to work together as country teams.

Our analysis of the project issues disclosed that not much had been written on the intersection of ICTs and human rights issues in these countries. One can thus say that this specific objective was very well satisfied. One also notes that the future of the project will benefit much from an interdisciplinary interrogation of the issues and that the analyses and research will not only be legal or policy oriented in nature but the kind that is interdisciplinary and targeted at the influence of policy not only in the legal sense but also with a focus on the sociological progress and evolution of the research issues.

In terms of administrative structures of the project on a country-by-country basis, the scoping phase was informed by the demographics of each country. In Nigeria for instance, it was relatively easier to overcome the inter-

sectoral tensions between civil society and academia than it was in Morocco. Yet one notes, as from the observations above, that both sectors are important in the monitoring, investigation and dissemination of research findings. It is important to bear in mind, therefore, what role each of them can play towards the next phase of the project. It is also important to point out that from the initial risk assessment of the project canvassed in the scoping phase the best way to mitigate the country specific sensitivities is to allow for some level of autonomy at the domestic level. On the issue of political sensitivity, we discovered that the threat of political interference of the project was not as prominent as had initially been feared. This could, however, differ with a more in depth analysis.

One of the benefits that have resulted from the scoping phase has been the heightened attention to ICTs and human rights at the various universities. Two especially interesting developments deserve to be pointed out. There has been a query as to how substantive content from this project can be integrated into the curriculum and whether a course could be taught along these lines. Sven Abrahamse and Emmanuel Ugirashebuja who met in Uganda during the workshop have already co-authored a paper on cybersecurity. As such, one concludes that the scoping phase had the result of springing into other research arrangements on issues closely related to ICTs and human rights although not within the scope of the project.

Literature surveys in the scoping phase

The objective of gathering and analyzing published evidence had interesting results. To satisfy this objective, two approaches were taken and both delivered impressive results. First as has already been mentioned above, each country team was expected to write a paper. Almost all these papers were thoroughly researched and drew from a plethora of published literature and offered interesting perspectives on the issues. The papers offered an analytical outlook of each study country and the relevance of research in this area. The paper on Nigeria for instance, pointed out that:

Although it is possible for ICT to create unique human right problems, for instance through excessive censorship and classifications that can stifle freedom of information, freedom of expression and e-enabled

intrusions of privacy, ICT is paradoxically a major force in guaranteeing freedom of information, freedom of expression and privacy. ICT could relate to human rights by supporting information sharing, freedom of expression, right to information and growth in rights awareness and defence (through reliable data base creation and management, help lines, anonymous phone numbers for accessing policy makers and security/anti-graft agencies for example) as contained in Article 19 of the Universal Declaration of Human Rights. ICT can make information available about rights, reduces time, space and cost.³

The paper also demonstrated that the ties between ICTs and human rights stretch beyond human rights concerns and involve several players. The authors concluded thus:

There is a growing recognition that collective action of stakeholders is the only way through which strategic interventions in ensuring freedom of information, privacy and generalized human rights protections. Such partnerships become even expedient when technical and capital intensive innovations like ICT come into the picture in immature democracies. Joining in this instance will involve collaborations between local intermediaries (stakeholders) for provision of neutral platform, coordination and social capital upon which different kinds of external facilitations and innovations can be built for maximum impacts and objectives' achievement.⁴

The other papers equally demonstrated the potential that the project has to ultimately affect not only the enjoyment and enforcement of human rights through and in the realm of ICTs but also to influence individual human development, while still focusing on ICTs.

Each of the papers also demonstrated the need for further research in several areas related to the issues canvassed in the project and in some cases taking dimensions that had not been initially included in the scoping phase. The papers were informative on the various legislative processes in the countries of study but some of the legislative developments were in their nascent stages while in other countries (such as South Africa and Morocco), the legal frameworks were more stable and had existed much longer. This is true of

³ Bolaji Owasanoye and Olayinka Akanle (2009); Information And Communication Technologies (ICTs), Freedom Of Information And Privacy Rights In Nigeria: An Assessment Prepared for the International Workshop on *The Nexus Between ICT and Human Rights in Africa*, organised by Human Rights and Peace Center, Faculty of Law, University of Makerere, Uganda, 2nd to 4th April, 2009, with support from the International Development Research Centre (IDRC), Ottawa, Canada at p. 4

⁴ *ibid* at p. 13

Uganda and Rwanda for instance. It would be important to track these developments and to contribute to them at that stage. The next phase will thus be positioned not only to track and influence the development of policy but also to work towards the reform of legislation in this area. This dual approach presents the unique opportunity to work towards a harmonization of certain legal aspects of the issue, while at the same time facilitating some countries in which legal developments are evolving to benefit from the work of better-developed legal systems. It is very important to point out here is that in the case of the right to Freedom of Expression and Access to Information, the project's consultant David Banisar has analyzed and contributed to legal processes not only in Africa but also in Common law Britain and Asia. Research and policy on these issues in countries like Rwanda where developments have not evolved as fast will thus benefit from a wealthy resource.

The second approach was to investigate existing literature on the issues. This process disclosed that much has been written about ICTs from different perspectives. There is a lot of debate on ICTs and *governance*, as had been envisioned at the time of developing the scoping document. What had not been envisioned at that time was the relationship between ICTs and "*government*." A survey of the literature disclosed the significant difference between the debates on *Internet governance*, *E-government* and the role of ICTs in good governance in general. This distinction was not clearly understood by the researchers during the scoping phase and remains a mystery to many respondents in the scoping phase and the terms are often misused or misinterpreted in the African context. From the human rights perspective, each of these would be interesting to interrogate further, but not all of them fall within the initially intended purview of the project. What would be interesting is for phase two to trace and further clarify between the three.

It also became apparent that while a lot is going on in the area of Internet governance for instance, not much discussion has focused on the human rights dimensions of such governance or of the Internet in general. It was discovered for instance, that there is a growing interest in Web 2.0 applications and user-

generated content, but not the analysis of how this relates to individual privacy rights and the interplay between free speech and hate speech.

While further developments unfold in the area of governance such as the role of the Internet Governance Forum on the broader and regional levels, hardly any of the topics there specifically address human rights concerns. Even then, Africa's participation in the discussion remains minimal. None of the materials analyzed demonstrated well thought out positions on each of the human rights concerns canvassed in the scoping phase. This was true of the present initiatives and the reports from previous initiatives such as WSIS. The next phase of the project thus presents the opportunity to offer a synchronized position on the attendant issues from a human rights perspective and to suggest practical solutions to the governance conundrum that relates not only to the Internet but also to other facets of ICTs for instance. Together with this, would be the need for a tempered approach to phone tapping or to the *yahoo - yahoo boys*⁵ and the avoidance of the further proliferation of the *yahoo millionaires'* phenomenon elsewhere in Africa.

The survey of the literature disclosed a fragmented and non-exhaustive approach to the human rights questions in the spectrum of ICTs. While much has been done on the question of apartheid in South Africa and the role of Radio in the Rwandan Genocide, not much has been done on the post conflict and contemporary challenges of the growing use of ICTs in these countries. South Africa's present problem of xenophobia has manifested in the use of ICTs, but nothing has been written of this process. In Rwanda, the role of radio in the genocide is now well documented, but no scholarly analysis has been conducted on how this affects the right to free speech and the use of ICTs in promoting free speech.

So what did the reviewed literature cover? The literature covered other aspects of ICTs and society such as ICTs and development, ICTs and Gender, ICTs and Education, ICTs and service delivery (such as medical services in

⁵ See Bolaji and Akanle: Information and Communication Technologies (ICTs), Freedom of Information and Privacy Rights in Nigeria: A Legal Analysis at p. 15

Nigeria), ICTs and health, ICTs and culture, ICTs and agriculture and so on. Some of the literature that comes close to canvassing the human rights dimensions of ICTs is steeped in constitutional analyses of non-African constitutional systems. What this revealed is that there is a glaring gap in the nexus between ICTs and Human rights. This is also true of court jurisprudence. It is hoped that the next phase of this project will contribute towards filling this gap.

Another major observation from the literature reviewed was the discrepancy in the levels of sophistication between the different legal systems and in their approaches to the attendant research issues. In the African context, for instance, the right to be left alone has been enunciated in South Africa's approach to the right to privacy, but this is not the case elsewhere. The discrepancy becomes clearer with the results from a comparison of African jurisprudence and that of other parts of the world. For instance, in the United States, the debate on the right to free speech has progressed so far as distinguishing between "*Commercial speech*" and "*ordinary speech*." The surveyed literature demonstrated the importance of this distinction and how the distinction has been applied to companies within the ICTs spectrum such as online service providers such as *Yahoo!*. It also became apparent that this distinction has human rights implications. But all of this is unknown to the African context. There is no court or constitutional jurisprudence in Africa on these issues. The same is true of the study of the question of jurisdiction on the Internet and the discourse on the human rights related issues.

It is apparent from the above views that African driven analyses and developments need to be both interrogated and documented. While the scoping phase disclosed a niche in this area, a further stage of the project would go a long way in canvassing the human rights dimensions of ICTs and influencing legal and regulatory policy.

Scoping issues before and after the scoping phase

There was significant discussion at the project workshop held in Kampala in April 2009 on two critical factors concerning the scoping issues: the first was definitional, while the second was methodological. From a definitional point of

view, it was agreed that the initial conception on what was to be regarded within the spectrum of ICTs varied and required more clarity. This was the same with some of the themes such as what was meant by ‘governance.’ As has been pointed out above, some of this confusion was to only abate later during the course of literature review. But the symbolic significance to be learned from this stage of the project is how confusing some of these aspects can be even to law makers and policy analysts with less devotion to research, hence the need for scholarly research and analysis to address the likely areas of overlap and confusion arising within the scope of the issues the project is intended to study at a later stage. Undoubtedly, various stakeholders stand to gain from this process; among these are lawmakers and reformers, judges, jurists and academics in various institutions of higher learning, politicians in the different countries, as well as the general populations in Africa.

From the methodological viewpoint, the question was whether to go deeper into the issues or to go broader within the initial scoping countries. It emerged in the course of the discussions that the project could significantly benefit from experiences with some other countries in Africa. Those suggested in this respect were Egypt, Kenya, Mauritius, Senegal and Tanzania. General consensus suggested that each of these countries presented interesting factors that could further inform the discourse analysis of the project especially when considered against the backdrop of the initial criteria applied in choosing the initial countries.

Further in the discussion on whether to broaden the project’s outlook was the question of whether to add new issues. The initial issues for consideration were: governance, privacy, freedom of expression, access to information and hate speech. Discussion disclosed an interrelatedness between these and some other issues of concern, most notably: cybersecurity, e-government and e-voting on the one hand, and what were perceived as cross cutting issues on the other. The cross cutting issues were listed to include: consumer protection, gender mainstreaming analysis, economic rights, and cultural issues.

Considered from the perspective of the objectives of the scoping study, some observations come to the fore. Firstly, the scoping study was not an end in itself. It did not serve as a conclusive process of evaluating the issues first listed, neither was that its main purpose. One major reason why it was a great success is because more than anything else, it disclosed the need for further research on the five primary issues listed in the scoping document. There is therefore, more work to be done on these issues. Secondly, some of the crosscutting issues have been and remain the focus of various other research projects,⁶ nevertheless, there remain some issues to interrogate, as well as the need to follow up on recent developments in the area. A possible compromise is to interrogate the issues within the already established research framework of the project without specifically delinking them as new issues. On the whole, however, the Scoping Phase met all its general and specific objectives as were laid out in the Scoping Document agreed upon between IDRC and HURIPeC ahead of the execution of the Research Support Grant Agreement, with recommendations for their variation should the project move to its second phase.

Methodology and Structural Breakdown

Scoping Paper, Country Tours and Workshop Preparations

The scoping phase commenced with the writing of a scoping study, which was disseminated among various research groups in the target countries and provided the selected partners with the parameters within which they supplied a general overview of the situation in the targeted countries. It is important to point out here that rather than predetermining the ICTs to be covered in the research, the project pursued an open ended approach through which ICTs were defined and the scope set by each specific country. This is because different countries regulate different aspects of what should be regarded as ICT and as such, use diverse legislation to cover ICT related issues. In Uganda for instance, some laws that raise some of the issues mentioned are not primarily ICT related such as the Press and Journalists Media Act, and the Anti-Terrorism Act, while in South Africa there is more sector specific legislation such as the Interception

⁶ For instance, the relationship between ICTs and Gender was to some extent canvassed at the Feminist Tech Exchange held in November 2008 in Cape Town, South Africa. Also quite some work in this area has been done by Dr. Catherine Adeya Nyaki (2002); ICTs in Africa: A Selected Literature Review and Annotated Bibliography, ISBN 1 902928 05 9.

and Monitoring Prohibition Act and the Regulation of the Interception of Communications and Provision of Communication-Related Information Act. Also, the scoping study confirmed that while the understanding may be largely similar, terminology could vary from one country to the next. In Morocco for instance, rather than referring to them as ICTs, researchers were more familiar with the expression 'New Technologies.'

The Team Leader was visited four of the five countries in the scoping study, namely, Rwanda, Morocco, Nigeria and South Africa in order to establish linkages with potential partners. The Team Leader also had to and did collect data, liaise with significant actors and potential partners in the target countries. He also drafted the Scoping Paper, which was discussed at a workshop—consisting of the proposed partners in the comprehensive research—held in Kampala in April 2009. The workshop discussed both the scoping paper as well as the modalities for full-scale collaborative research.

Discourse Analysis

Selective interviews were to be conducted with some of the key players in the different countries and also, during the period of the scoping study, approaches were to be agreed for the gathering of information and responses of the populations of the target countries. This part of the methodology was not well executed. During the early stages of the project, there were discussions on starting a D-group in which information would be circulated among the various partners but this never quite materialized. A yahoo group was then created to which only the project consultant subscribed.

Literature Review

The team also conducted a literature review of the scholarly studies available that were related to the areas that the research project sought to study. The literature was analyzed and played a key role in shaping the interdisciplinary approach and policy considerations that the project would take. The quality of the papers presented at the aforesaid workshop indicated that not only did the coordinating team at the Human Rights and Peace Centre review the literature but also each of the country teams reviewed the literature that was pertinent in providing an informative overview of the respective countries.

Handling of Themes

Two possible approaches were considered for the handling of the themes on which the study focused. The first option was to ask a partner organization to take the lead on a specific theme and handle it in liaison with the teams on the ground. This approach was subject to having entered into an arrangement with these partners and their willingness to adopt such an approach. The second option was for the country researchers to take the lead on each theme. The ultimate choice was determined once relations with partners and Country teams were finalized. It was agreed that in each country's case, the country team would have the autonomy to interrogate the issues. In countries where the teams were from different institutions such as South Africa and Rwanda, it was left to the country teams to decide among them how the themes would be handled. In the result, the approach was a success as the teams worked effortlessly together.

Suffice it to note however, that the decision to let the country teams have autonomy on how to handle the themes was informed in part by the country specific dynamics encountered in selecting the research partners. In Nigeria, there was a conspicuous reluctance among academics to liaise with civil society and vice versa. We encountered the same reluctance in Morocco. While the intention was to strike a balance between academia and civil society, we were able to achieve that in Nigeria but not in Morocco.

ICT - Human Rights Workshop

A workshop was held in Kampala, Uganda in April 2009 at which all the country teams and different partner organizations (save those from Morocco) deliberated on the scoping paper and discussed the research themes and methodological aspects of the project in detail. The workshop also agreed on the modalities for the more extensive execution of a research project on the nexus between ICTs and human rights and the attendant themes. Some additional stakeholders, particularly in Uganda and Kenya were targeted and the workshop was a great success. As has already been noted above, each team presented papers on their countries and almost all these papers were published subsequently.

Workshop Report and Proposal Submission

Following the workshop, the lead research team at HURIPEC prepared a proposal for phase two that is yet to be submitted to IDRC for consideration. The proposal incorporates the various outcomes from the deliberations at the workshop.

Project Activities

There were essentially five project activities during the scoping phase:

- (i) Conducting a literature review of the attendant issues;
- (ii) Setting up teams in the five countries;
- (iii) The team leader's attending of events relating to or beneficial to the project;
- (iv) Organizing the workshop and,
- (v) Publishing the special issue of the *East African Journal on Peace and Human Rights*.

We had to conduct literature review while concurrently setting up the teams for the project. The literature review was critical in informing us which work was being done where and which entities or personalities would make viable partners in the project. The literature review also revealed who was doing what in the area in order to avoid duplicity of roles and outputs with other projects working in the same field. This particular activity was therefore essential in informing perspectives during the deliberations at the workshop.

Setting up the country teams was probably the most critical activity on which the overall success of the project depended. In some countries it was initially difficult to find potential partners (this is especially true of Nigeria and Morocco). Coordination with the team in Morocco was particularly challenging due to the difference in languages. While the rest of the teams spoke and wrote in English, the Moroccan team wrote and spoke in French. This affected not only the process that all the documentation went through, but also the preparations for the workshop as well as all correspondences between the coordinators and the team itself. While setting up the teams took two months

as had initially been anticipated, coordinating the rest of the activities took a lot longer.

We found that budgeting for the team leader to attend other activities relating to the project was particularly helpful in shaping views and perspectives as well as studying other project designs and how these were contributing to the success of other projects. The team leader for instance, constantly consulted with the coordinators of the ACA2K project and gleaned important lessons from them on administrative as well as technical issues. The interactions with this particular project were useful in determining potential areas of overlap between these two projects as well as in informing the decision on whether to organize separate workshops in the different countries at this stage of the project.

While the workshop had been scheduled for the later part of 2008, it did not take place until the beginning of April 2009. After meeting various potential partners and selecting our research teams, the teams took significant time to prepare their papers. We found communication to be the most challenging aspect of this activity as well as of the coordination and editing of the special issue.

Project Outputs

At the commencement of the project, it was envisioned that researchers would write papers that would be published in a journal. This was achieved as most of the papers that were presented at the workshop were published in a special issue cited as Volume 16 Number 1. Two of the papers presented at the workshop were never published, nevertheless it is envisaged that with some more work, these too have the potential to meet publishing requirements. These two papers are titled: Sven Abrahamse: *“Examining the Nexus Between ICTs and Human Rights in Africa: The Case of South Africa”* and Said Aghrib and Fatiha Sahli: *“Communication and Information Technologies and Human Rights: The Case of Morocco.”*

During the course of this project, one of Uganda’s team members also published two working papers and some articles in Uganda’s local daily newspapers in the field and some of his views were subsequently presented by a non-governmental

organization to the Parliamentary committee that was considering Uganda's Regulation of Interception of Communications Act, which at the time was still a bill. Some of his works include: R. Kakungulu-Mayambala: *"Phone Tapping Bill a Human Rights Concern"* The New Vision Tuesday March 10th 2009, and R. Kakungulu-Mayambala: *"Data Protection and National Security: Analyzing the Right to Privacy in Correspondence and Communication in Uganda"* Working Paper No. 25, 2009.

It is anticipated that phase two of the project will result in a number of policy briefs in each of the surveyed countries and at least one book with contributions on in depth analyses from the different countries and research partners.

Project Outcomes

There is now a heightened sense of recognition of the human rights dimension of the proliferation of ICTs among the various research partners. This is especially true of Makerere University's Faculty of Law. The project was critical for the positioning of our researchers (especially the Project Coordinator/Team Leader) within the visibility of other research networks. Robert Kirunda has for instance since presented at the 10th Law Via Internet Conference and been invited to consult for the Lexum Project on the study of Legal Information Institutes, with a particular focus on Uganda's Legal Information Institute. This is one of the other projects funded by IDRC and it is important to note that without the exposure from this project, some of these linkages would have been inconceivable, at least in the near future. Also, while at the commencement of the project, the issue of the interrelation between Gender and ICTs had not been emphasized, participants at the workshop benefitted from the views of gender experts such as Dr. Consolata Kabonesa who discussed one of the papers and a presentation from Alice Munyua, a Gender and ICTs expert herself. The views of these experts reinforced the need to focus on Gender issues across Africa. To this end, the proposal for phase two includes aspects of Gender mainstreaming as a cross cutting issue in the area of ICTs and human rights. However, having been limited in its scope to only exploring the viability of running a project of a larger scale on the issue, there is not much discernible behavioral change.

Overall Assessment and Recommendations

This project has exposed an important niche for researchers and policy makers in Africa. The project disclosed that there is a vast amount of work that needs to be done sooner rather than later, especially as ICTs and Internet governance take shape in Africa. Without the technical and financial support received from IDRC, this project would not have been possible. The events that IDRC invited our researchers (especially the Project Coordinator/Team Leader) to were invaluable. They offered an opportunity to network and to learn from other projects, as well as to offer consulting services and to harness research. It was critical that the project benefited from the expertise of David Banisar as the Project Consultant and from Alice Munyua who was possessed with the knowledge and exposure from both Civil Society and a Government Regulator. One major challenge, however, was the failure to engage other partners as had initially been envisaged. This was mainly due to the limited resources for the nature of the project that we undertook (this being primarily a scoping phase) and also due to the heavy schedules of some of the targeted personnel.

There were major administrative challenges posed by the administration of countries that spoke more than one international language but this was an anticipated challenge and not an insurmountable one. It was learned in the coordination of this project that timing and staffing is critical. While it may have taken a while to resolve some administrative challenges, the project was certainly a worthwhile investment of time and financial resources. The project model and structures were very stimulating. Nevertheless, we learned that in structuring the timelines for the next phase of this project or similar projects, more time should be allowed for the administrative planning and structuring of the project both prior and subsequent to the signing of the Research Support Grant Agreement. The ultimate recommendation, however, would be to carry on this work to the next phase.